

These are the tentative rulings for civil law and motion matters set for Thursday, March 12, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, March 11, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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**1. M-CV-0058024      Perry, Todd vs. Wells Fargo Home Mortgage**

The motion for leave to file cross-complaint is continued, on the court's own motion, to March 26, 2015 at 8:30 a.m. in Department 40 to be heard in conjunction with the two motions to compel discovery.

**2. M-CV-0062774      MUFG Union Bank, N.A. vs. White, Lisa**

A motion for summary judgment in an unlawful detainer action may be brought at any time after the answer is filed upon five days notice. (CCP§1170.7.) A party is entitled to bring a motion for summary judgment where there are no triable issues of fact. (CCP§437c.) The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party has the burden of showing, by affidavit, facts establishing every element necessary to sustain a judgment in favor of the party. (*Consumer Cause, Inc. v. Smilecare* (2001) 91 Cal.App.4th 454, 468.) Once a plaintiff proves its prima facie case, the burden of proof shifts to the defendant to prove material facts. (CCP§437c(p)(1).)

To prevail in an action for unlawful detainer following a foreclosure, plaintiff must show that (1) plaintiff purchased the property upon foreclosure and title following the foreclosure sale has been duly perfected, (2) defendant was served with a three-day written notice to quit the property, and (3) defendant continued in possession after expiration of the notice. (CCP§1161a(b)(3).)

Plaintiff provides evidence that it purchased the property at a trustee's sale and said title was duly perfected. (Plaintiff's SSUMF Nos. 4, 5.) Plaintiff also shows that defendants were served with a notice to quit and to vacate. (Plaintiff's SSUMF Nos. 6, 7.) Finally, Plaintiff submits evidence that defendant remains on the property after the expiration of the notice. (Plaintiff's SSUMF Nos. 8, 9.)

As plaintiff has made a prima facie showing in support of summary judgment, the burden now shifts to defendant. Therefore, the appearance of all parties is required at the hearing as defendant may appear to provide evidence of a triable issue of material fact either in writing or orally at the hearing. (CRC Rule 3.1351(b), (c).)

### **3. S-CV-0028118            Bartlett, Jason, et al vs. First American Realty & Finance**

#### Defendants' Motion to Quash Writ of Execution

##### Ruling on Requests for Judicial Notice

Defendants' request for judicial notice is granted. Plaintiff's request for judicial notice is granted.

##### Ruling on Motion

The motion is granted in part. The motion is directed towards the writ of execution issued on December 5, 2014 as to judgment debtor defendant Randy Cheek, Sr. This writ is not directed towards judgment debtor defendant Randy Cheek, Jr. nor do defendants present such a writ as to Randy Cheek, Jr. Defendant Randy Cheek, Jr. is not entitled to quash this writ since it is not directed towards him. For these reasons, the motion is denied as to defendant Randy Cheek, Jr.

The court has inherent power to control its process, which allows it to quash an improperly or inadvertently issued writ of execution. (*Montgomery v. Meyerstein* (1924) 195 Cal. 37, 46.) Defendant Randy Cheek, Sr. contends that the writ of execution should be quashed since it was improperly issued as the judgment was fully paid. (see *Meyer v. Meyer* (1952) 115 Cal.App.2d 48, 49.) Specifically, a full satisfaction of judgment was entered on June 13, 2014 for payment made by judgment debtor defendant Leslie Salondaka. A judgment will remain in effect against joint debtors for the remaining amount of a judgment so long as the partial satisfaction is clearly indicated on the acknowledgment of satisfaction. (*McCall v. Four Star Music Co.* (1996) 51 Cal.App.4th 1394, 1401; see also *Bank of America, Nat'l Trust & Savings Ass'n v. Duer* (1941) 47 Cal.App.2d 100, 102-103.) Where a satisfaction is made by one of several joint debtors, words such as "in full satisfaction of judgment debtor's pro rata liability on the judgment" should be added. (*McCall v. Four Star Music Co.* (1996) 51 Cal.App.4th 1394, 1401.) The satisfaction entered here states it was paid by defendant Leslie Salondaka but does not clearly identify that it is a partial satisfaction for her proportionate share. Based upon the record before the court at this time, the judgment appears to be satisfied and the writ of execution is properly quashed. Nonetheless, this order does not

prevent plaintiff from seeking such appropriate relief to amend or vacate the satisfaction of judgment as may be appropriate.

The request for sanctions is denied as defendants provide no statutory authority to support such a request.

#### Defendants' Motion to Quash Bench Warrant

##### Ruling on Requests for Judicial Notice

Defendants' request for judicial notice is granted. Plaintiff's request for judicial notice is granted.

##### Ruling on Motion

As an initial matter, the court notes that bench warrants are recalled, not quashed. In this instance, defendants' request is deemed to seek a recall of the bench warrant issued against Randy Cheek, Jr. The motion is granted in part. The motion is denied as to defendant Randy Cheek, Sr. as the bench warrant was issued for defendant Randy Cheek, Jr.

The court may issue an arrest warrant where a judgment debtor fails to appear after being properly served with an order to appear for examination. (CCP§708.170(a).) It is axiomatic that an order for examination is only available where there is an outstanding judgment amount owed. As previously discussed regarding defendants' motion to quash the writ of execution, the court file shows that a full satisfaction of judgment has been entered with no express indication that the satisfaction was meant to be a partial satisfaction for defendant Leslie Salondaka's proportional share of liability. Until such time as plaintiff seeks relief to amend or vacate the current satisfaction, it appears the judgment is satisfied in full. The bench warrant issued as to defendant Randy Cheek, Jr. is recalled.

The request for sanctions is denied as defendants provide no statutory authority to support such a request.

#### **4. S-CV-0030458          Regan, Charles, et al vs. LMD Roseville, LLC**

##### Cross-Complainant's Motion to Tax Costs

##### Ruling on Request for Judicial Notice

Cross-defendant's request for judicial notice is granted. The court, on its own motion, takes judicial notice of cross-complainant's motion papers filed on October 10, 2014 seeking a determination for good faith settlement in addition to taking judicial notice of the December 31, 2014 order after hearing for the motion.

### Ruling on Motion

The motion is granted. Upon reviewing the unopposed good faith settlement order after hearing and related moving papers, it shows that cross-defendant Beutler Corporation was listed as a settling subcontractor. The substance of the motion states that the settlement was made in exchange for a waiver of costs. In light of this prior or and the related moving papers, Beutler is not a prevailing party entitled to costs.

**5. S-CV-0031530            Moore, Gregory M vs. Wells Fargo Bank, N.A. et al**

The demurrer and motion to bifurcate are continued, on the court's own motion, to March 19, 2015 at 8:30 a.m. in Department 40 to be heard in conjunction with the motion for leave to file amendment to the third amended complaint.

**6. S-CV-0032520            Creasy, Michael, et al vs. Del Webb California Corporation**

The motion for leave to intervene is continued, on the court's own motion, to March 26, 2015 at 8:30 a.m. in Department 40 to be heard in conjunction with the pending motion for leave to intervene.

**7. S-CV-0033306            Ambroselli, Marco vs Anapolsky, Louis J.**

### Defendant's Motions for Sanctions

Both of defendant's unopposed motions are granted as to the request for evidentiary sanctions. Plaintiff is precluded from introducing any evidence not discovered by defendant during trial related to the form interrogatories, set one and special interrogatories, set one propounded by defendant.

**8. S-CV-0033402            Margolis, Simon S., et al vs. Centex Homes of California**

Intervenor Maryland Casualty Company's unopposed Motion for Leave to Intervene is granted pursuant to CCP§387. The complaint in intervention shall be filed and served on or before March 20, 2015.

**9. S-CV-0033842            Sweda, John L., et al vs. Ford Motor Company**

### Defendant's Motion for Summary Adjudication

### Ruling on Objections

Defendant's objections to the Lepper declaration and the Ungs declaration are overruled in their entirety.

### Ruling on Motion

The trial court shall grant a motion for summary judgment if “all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” (CCP§437c(c).) A party to the action may also move for summary adjudication if that party contends there is no merit to one or more of the causes of action. (CCP§437c(f)(1).) However, a motion for summary adjudication shall only be granted where it completely disposes of a cause of action. (*Ibid.*) In reviewing such a motion, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The moving defendant has the initial burden of showing that a cause of action has no merit by establishing that one or more elements of a cause of action cannot be established or there is exists a complete defense to the cause of action. (CCP§437c(p)(2).) Once this initial burden is established, the burden shifts to the plaintiff to establish a triable issue of material fact. (*Ibid.*)

Defendant seeks summary adjudication as to the first, second, third, fourth, and fifth causes of action. Plaintiffs concede that the fifth cause of action for CLRA violations should be stricken. In light of this, the motion is granted as to the fifth cause of action.

Defendant’s sole challenge to the first, second, third, and fourth causes of action is based upon the economic loss rule in that plaintiffs have only shown an economic loss, which limits their recovery to contract damages. Defendant submits a separate statement that refers to the same four facts to support its contention that damages for all four causes of action cannot be established: (1) plaintiffs purchased a 2006 Ford F-350 truck on December 31, 2005 (Defendant’s SSUMF Nos. 1); (2) plaintiffs purchased the vehicle for Sweda Construction (Id. at Nos. 2); (3) the truck was primarily used for the construction business (Id. at Nos. 3); and (4) plaintiffs allege contract damages, incidental damages, and damages equal to the difference between the value of the vehicle as accepted and the value of the vehicle if it had been warranted (Id. at Nos. 4). The economic loss rule limits recovery to contractual damages for a plaintiff who suffers a purely economic loss. (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 988.) In order for a plaintiff alleging fraud based claims to recoup tort damages related to a contract, the plaintiff must show a harm arising from tortious conduct independent of the breach of contract; stated another way, the plaintiff must show a violation of an independent duty arising from tort law. (*Food Safety Net Services v. Eco Safe System USA, Inc.* (2012) 209 Cal.App.4th 1118, 1130.) Defendant’s motion fails to address whether plaintiffs are unable to establish such an independent duty. Absent such an analysis, the court cannot determine that the causes of action are barred by the economic loss rule. Since defendant has not met its initial burden, the motion is denied as to the first, second, third, and fourth causes of action.

**10. S-CV-0034116                      Global Commodities Trading Group vs. Penny Newman Grain**

The motion to seal documents is continued, on the court's own motion, to be heard in conjunction with the pending motion to seal documents.

**11. S-CV-0035100                      Silverio, Simon S., et al vs HSBC Mortgage Services, Inc**

The motion for judgment on the pleadings is dropped from the calendar. Plaintiffs filed a full dismissal on March 5, 2015.

**12. S-CV-0035272                      Ashley, Gail J. Administrator vs. Kerria Holdings, LLC**

Defendants' Demurrer to the First Amended Complaint is overruled. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) When reading the first amended complaint as a whole, and in light of case law holding that actions for custodial elder abuse against health care providers are separate and distinct from professional negligence (see *Delany v. Baker* (1999) 20 Cal.4th 23; *Benun v. Superior Court* (2004) 123 Cal.App.4th 113), the wrongful death and negligence are sufficient pled and not barred under the statute of limitations.

Defendants' answer or general denial shall be filed and served on or before March 20, 2015.

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